

JUDITH L. CORLEY
(202) 434-1622

May 21, 2004

607 Fourteenth Street N.W.
Washington, D.C. 20005-2011

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 MAY 25 A 11:04
PHONE: 202 628 6600
FAX: 202 628 6600
www.fec.gov

BY FACSIMILE (AND REGULAR MAIL)

Jeff Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5440 – America Votes, Inc. and Cecile Richards

Dear Mr. Jordan:

On behalf of America Votes, Inc. and Cecile Richards (referred to collectively hereafter as "America Votes"), this letter is submitted in response to the complaint filed with the Federal Election Commission ("FEC") by Bush-Cheney 2004 and the Republican National Committee ("Complainants").

The complaint is without merit with respect to America Votes and should be dismissed. The complaint is so poorly drafted that it is difficult even to discern what allegations are made against America Votes. It misstates the law on several issues and propounds legal theories that are not supported by the federal campaign laws or the rules or opinions of the Federal Election Commission. Further, Complainants do not provide any facts or other information in support of their claims with respect to America Votes. For these reasons, discussed in more detail below, the FEC should dismiss this complaint with respect to America Votes and take no further action.

The complaint claims that America Votes is part of the "soft money conspiracy" that is at the root of all of the alleged violations of federal campaign law in the complaint. The alleged violations that appear to involve America Votes include acceptance of "illegal" soft money contributions. In making its allegations, the complaint misstates and mischaracterizes America Votes' purpose and operations. At various points in the complaint, America Votes is described as:

- [responsible for] coordination of the operation of more than two dozen allied special interest organizations; Complaint at p. 21

27044180622

May 21, 2004

Page 2

- an umbrella group for two dozen liberal special interest groups, each of which has pledged \$50,000 in soft money for voter mobilization efforts beyond their own membership; Complaint at p. 30
- to coordinate all the soft money activities of about two dozen other soft dollar 527 organizations, labor organizations and liberal tax exempt entities. Complaint at p.36

These descriptions demonstrate why the complainants have mistakenly included America Votes as a respondent in the complaint. A quick review of America Votes' web site (www.americavotes.org) would clarify that it is "a coalition of membership-based groups in the country, who have come together to increase voter registration, education and participation in electoral politics." A list of the coalition's current membership is also on the web site.

America Votes does not "coordinate the operation" or "coordinate all the soft money activities" of its membership. Each participating organization has its own budget, plans and operations that are totally independent of America Votes and any of the other participants. America Votes serves only as type of clearinghouse for information from participants to other participants.

Each participant is asked to provide \$50,000 as a type of "dues" payment. These funds are not used for voter mobilization operations or for public communications. Rather, the funds go to the overhead expenses of America Votes itself. America Votes does not undertake any voter mobilization operations in its own name. It supports the activities of its participating members:

- America Votes provides a forum for its participants to discuss their plans for voter registration, voter communications, canvassing, issue ID work, and GOTV activities.
- America Votes through its state directors works with local participating groups to ensure that they are effectively working together and reaching out to the widest possible audience.

An example of the types of services provided by America Votes is found on its web site: the May 8 National Day of Action. America Votes worked with its participating organizations to plan a day where volunteers around the country could come together to work on voter registration and mobilization efforts sponsored by participating

27044180623

May 21, 2004

Page 3

members and other groups. America Votes itself, however, did not conduct any registration or mobilization activity. Rather, it encouraged member groups to set up activities on May 8, provided organizational materials (e.g., sample press release, sample flyer) and served as a central information source for participating groups. It also functioned as a collection point for names of volunteers not associated with a participating member by signing up volunteers on its web site. Each volunteer that signed up was directed to a group that was conducting voter registration or mobilization activities in the volunteer's state on May 8.

America Votes is not a political committee under the federal campaign laws. It does not make contributions to federal candidates and it does not make public communications that expressly advocate any federal candidate. It does not make public communications that promote, support, attack or oppose any federal candidates. America Votes does not coordinate with any candidates or party committees. As part of the agreement to join America Votes, each participant must agree to abide by a Memorandum of Understanding ("MOU") (copy attached) that specifically prohibits the sharing of information gained from candidates or party committees. See paragraphs 7-8. The MOU also prohibits sharing information provided by a participating member with candidates or party committees.

America Votes does serve as the vehicle through which various organizations coordinate their voter registration and mobilization activities. There is no prohibition against noncandidate, nonparty organizations coordinating with each other. FEC Advisory Opinion 2003-37.

Given this more accurate description of America Votes and its activities, it is difficult to see why it is included in the "conspiracy" alleged in the complaint. It is clear that America Votes has not violated any provision of the federal campaign laws and the complaint should be dismissed with respect to it.

Very truly yours,



Judith L. Corley
Counsel to America Votes and
Cecile Richards

27044180624

MEMORANDUM OF UNDERSTANDING

FOR

PARTICIPANTS IN AMERICA VOTES, INC.

Purpose of Memorandum of Understanding: America Votes is an Internal Revenue Code section 527 organization incorporated as a nonprofit corporation under District of Columbia law. It was organized by the Participants to act as the vehicle for the Participants to coordinate efforts to accomplish the following goals:

- a) To increase voter participation through registration, education and mobilization; and
- b) To increase voter awareness of electoral issues as well as candidates' positions and records on those issues, including, but not limited to the environment, civil and human rights, education, women's issues and worker and consumer rights.

America Votes intends to accomplish these goals by facilitating coordination between and among the Participants and by fostering cooperation with other groups, and by undertaking activities in its own right.

At the same time, each Participant in America Votes will conduct its own independent program(s) to accomplish these goals.

This Memorandum of Understanding is designed to set out the understandings of the Participants regarding their participation in America Votes, with a specific view toward identifying those issues that could raise questions under laws and regulations that govern the independent activities of the Participants (specifically the federal and/or state campaign finance laws, and the Internal Revenue Code).

1. America Votes will operate at all times as a nonfederal Section 527 organization. America Votes will comply with federal, state and local laws and regulations governing its activities.
2. Within this framework, America Votes' activities may include, but are not limited to, voter registration, education, issue polling, voter file enhancement, and issue identification and GOTV. To this end, it will engage in non-partisan issue-based electoral activities that do not expressly advocate the election or defeat of clearly identified candidates.

- 27044180626
3. America Votes will not make contributions to or expenditures on behalf of candidates for federal or nonfederal office.
 4. America Votes will not undertake any activities that would in any way restrict or limit any of the independent programs of the Participants.
 5. As part of America Votes' efforts to coordinate the activities of the Participants, the Participants will share information about their independent activities. Each Participant reserves the right to determine the nature and degree of information that it will share.
 6. Each Participant is responsible for ensuring that the receipt of specific data or information from America Votes or from any other Participant is used in a manner consistent with their legal status and individual situation. For example, if a Participant concludes that any sharing of specific data or information would result in a contribution in-kind to that Participant, the Participant will have the opportunity to purchase the data or information, or decline the receipt of it, and, thus, not receive anything of value from America Votes or any of the other Participants.
 7. All Participants understand that no data or information may be shared with other Participants through America Votes if the data or information was nonpublic and received from a federal, state or local candidate, a federal, state or local candidate's campaign, or an agent of a federal, state or local candidate.
 8. All Participants understand that no data or information may be shared with other Participants through America Votes if the data or information was nonpublic and received from a national, state, or local party committee, or agent of a national, state or local party committee.
 9. America Votes, in engaging consultants to perform services, will ensure that the consultants understand and agree to abide by this Memorandum of Understanding as well as the federal regulations relating to "common vendors", 11 C.F.R. § 109.21(c)(4), in their performance of services for America Votes.
 10. All Participants understand that, in engaging consultants in the course of their independent activities, the Participants will ensure that the consultants understand and will agree to abide by this Memorandum of Understanding in their performance of services for the Participants.
 11. When participating in America Votes activities, America Votes and each Participant will not act as an agent, as defined in 11 C.F.R. § 109.3, of any federal, state or local candidate, any federal, state or local candidate's

campaign, or any national, state or local party committee, or any agent of any of the foregoing.

12. America Votes and all Participants understand that they will not share information about the prospective independent activities of America Votes, or those prospective independent activities facilitated or coordinated by America Votes, with any federal state or local candidate, any federal, state or local candidate's campaign, any national, state or local political party or agents of any of the foregoing in a manner that could constitute or give rise to any inference of coordination within the meaning of 11 CFR 109.21(d).
13. Each Participant understands that by agreeing to participate in America Votes that Participant has agreed to abide by the understandings of this Memorandum of Understanding.